



**Monica J. Lindeen**

Commissioner of Securities & Insurance  
Montana State Auditor  
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## **REQUIREMENTS FOR SURPLUS LINES INSURERS**

In order to become eligible to write Surplus Lines business in Montana, you must comply with the following general requirements. Note that requirements differ for foreign and alien insurers.

FOREIGN OR ALIEN INSURERS must appear on the Commissioner's most recent list of eligible surplus lines insurers before they can begin writing any business in the state of Montana. The list is revised quarterly.

### **FOREIGN INSURERS**

1. Confirm appointment of the Commissioner of the state of Montana as insurer's attorney to receive service of process and designate the name and address of the person to whom process against the insurer, served upon the Commissioner of Insurance, is to be forwarded (SURLINES.SP).
2. Submit a current certificate from the Commissioner of Insurance in the insurer's domicile state showing the insurer is authorized to transact the kinds of insurance proposed to be transacted in the state of Montana.
3. Maintain capital and surplus or its equivalent under the laws of its state of domicile of no less than \$15 million.
4. Provide the Commissioner of the state of Montana a 9 x 14 inch copy of its current Annual Statement and a copy of the insurer's most recent Quarterly Statement. Statements in other sizes are not acceptable.
5. Provide the Commissioner with a description of the products the insurer plans to sell in Montana and provide the Commissioner with a detailed description of the insurer's proposed market plan.

NOTE: All surplus lines business **MUST** be written through a Montana Insurance Department authorized Surplus Lines Producer. (See Section 33-2-306, MCA.) Any licensed resident or nonresident property/casualty producer may apply for a Surplus Lines Producer License. Contact the Agent Licensing Bureau to obtain the applicable forms.

(Continued)

## **ALIEN INSURERS**

1. Insurer's name must appear on the NAIC's most recent quarterly "Financial Review of Alien Insurers" list.

NOTE: All surplus lines business **MUST** be written through a Montana Insurance Department authorized Surplus Lines Producer. (See Section 33-2-306, MCA.) Any licensed resident or nonresident property/casualty producer may apply for a Surplus Lines Producer License. Contact the Agent Licensing Bureau to obtain the applicable forms.



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## FOREIGN INSURER SURPLUS LINES ELIGIBILITY APPLICATION

APPLICANT COMPANY'S NAME \_\_\_\_\_

HOME OFFICE ADDRESS \_\_\_\_\_  
(Street or PO Box)

\_\_\_\_\_  
(City) (State) (Zip) (NAIC Number)

\_\_\_\_\_  
(FEIN Number)

MAILING ADDRESS \_\_\_\_\_  
(Street or P.O. Box)

\_\_\_\_\_  
(City) (State) (Zip)

Name and Phone Number of Contact Person \_\_\_\_\_

DATE INCORPORATED \_\_\_\_\_ STATE OF DOMICILE \_\_\_\_\_

ARE YOU A SUBSIDIARY? YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, list ultimate parent company.

ARE YOU A PARENT COMPANY? YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, list insurance subsidiaries: (Attach separate sheet, if necessary.)

HAS ANY ADMINISTRATIVE ACTION EVER BEEN TAKEN AGAINST YOU IN ANY OTHER STATE?

YES \_\_\_\_\_ NO \_\_\_\_\_ If yes, please explain.

HAVE YOU EVER BEEN FINED IN ANY OTHER STATE? YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, please explain.

Herewith submitted are the following documents:

- ( ) Current Annual Statement
- ( ) Current Quarterly Statement
- ( ) Certificate of Authority, Domiciliary State
- ( ) Completed Service of Process (SURLINES.SP)
- ( ) Descriptions of products to be sold in Montana and proposed marketing plan

DATED \_\_\_\_\_

\_\_\_\_\_  
(Name & Title of Officer)

\_\_\_\_\_  
(Signature of Officer)

C E R T I F I C A T I O N

I, \_\_\_\_\_, hereby certify that I am the duly appointed and qualified  
(Name)  
\_\_\_\_\_ of \_\_\_\_\_, a corporation existing under  
the  
(Officer) (Name of Company)  
laws of the State of \_\_\_\_\_ and that \_\_\_\_\_ hereby agrees  
to  
(Domicile) (Name of Company)

abide by Montana surplus lines statutes, all other applicable statutes in Title 33, Montana Code Annotated  
and will only produce business in Montana through a Montana licensed surplus lines producer.

IN WITNESS WHEREOF, I have hereunto set my hand as \_\_\_\_\_ of the  
said  
corporation this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Insurance Company

# APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE OF PROCESS

\_\_\_\_\_  
(Name of Company), duly incorporated under the laws of the State of \_\_\_\_\_, engaging in 'surplus lines' underwriting in the State of Montana, pursuant to the provisions of Montana Law, appoints THE DULY ELECTED MONTANA COMMISSIONER OF SECURITIES AND INSURANCE, OFFICE OF THE STATE AUDITOR as its true and lawful attorney to receive service of legal process in any action or proceeding against it in the State of Montana. The Company authorizes the Commissioner, or, in the Commissioner's absence, an employee of the Commissioner, to acknowledge service of legal process on behalf of the Company in this state. The Company waives all claim to or right of error by reason of acknowledgement of service. The Company does consent and agree that any lawful process against it that is served upon the Commissioner as appointed attorney shall have the same legal force and validity as if served upon the Company.

This appointment and authority is irrevocable and is to continue in force so long as any liability remains outstanding or pending in the State of Montana on account of any contract or certificate of insurance or indemnity issued by or through the said Company.

IN WITNESS WHEREOF, the said Company has to these presents affixed its corporate seal and caused the same to be subscribed and attested by its President and Secretary, or other chief executive officers at the City of \_\_\_\_\_, in the State of \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Name and address of the person to whom Service of Process is to be forwarded.

The link for the current Approved Risk List/White List is:  
<http://sao.mt.gov/forms/Exams/Lists/ApprovedRiskList.pdf>

**33-2-301. Short title -- purpose -- definitions.** (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) The purpose of this part is to:

- (a) protect persons seeking insurance in this state;
- (b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;
- (c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and
- (d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

- (a) "Affiliated" means that a person directly or indirectly controls, is controlled by, or is under common control with the insured.
- (b) "Affiliated group" means any group of persons that are affiliated.
- (c) "Approved risk list" means the list approved by the commissioner of the kinds of insurance presumed unobtainable from authorized insurers when Montana is the home state of the insured.
- (d) "Authorized insurer" means an insurer authorized pursuant to [33-2-101](#) to transact insurance in this state.
- (e) (i) "Business entity" means a corporation, a limited liability company, an association, a partnership, a limited liability partnership, or other legal entity.  
(ii) The term does not include an individual.
- (f) "Control", including the terms "controlled by" and "under common control with", means that:
  - (i) the person directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25% or more of any class of voting securities of a business entity; or
  - (ii) the person controls in any manner the election of a majority of the directors or trustees of a business entity.
- (g) "Eligible surplus lines insurer" means an unauthorized insurer that is eligible to issue surplus lines insurance under [33-2-307](#).
- (h) "Exempt commercial purchaser" has the meaning provided in [33-2-318](#).
- (i) "Export" means to place surplus lines insurance with an unauthorized insurer.
- (j) "Home state" means, with respect to an insured:
  - (i) the state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence;
  - (ii) if 100% of the insured risk is located outside the state referred to in subsection (3)(j)(i), the state with the greatest allocated percentage of the insured's taxable premium for that surplus lines insurance contract;
  - (iii) if more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, the home state as determined under subsection (3)(j)(i) or (3)(j)(ii) for the member of the affiliated group that has the largest percentage of premium attributed to it under the surplus lines insurance contract; or
  - (iv) if a group policyholder pays 100% of the premium from its own funds, the home state of the group policyholder as determined under subsection (3)(j)(i) or, if a group policyholder does not pay 100% of the premiums from its own funds, the home state of the group member as determined under subsection (3)(j)(i).
- (k) "Independently procured insurance" means surplus lines insurance procured directly by an insured from an eligible surplus lines insurer.
- (l) "Multistate risk" means a risk covered by an unauthorized insurer with insured exposures in more than one state.
- (m) "Principal place of business" means the state where the insured business maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.



- (n) "Principal residence" means the state where an individual insured resides for the greatest number of days during a calendar year or, if the insured's principal residence is located outside of any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is located.
- (o) "Producing insurance producer" means a Montana-licensed property and casualty insurance producer dealing directly with a person seeking insurance.
- (p) "Qualified risk manager" has the meaning provided in [33-2-319](#).
- (q) "Single-state risk" means a risk covered by an unauthorized insurer with exposures in only one state.
- (r) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.
- (s) (i) "Surplus lines insurance" means any property or casualty insurance permitted in a state to be placed directly or through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance. The term includes independently procured insurance.
- (ii) The term does not include the kinds of insurance exempted under [33-2-317](#).
- (t) "Surplus lines insurance producer" means an individual or business entity licensed under [33-2-305](#) to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.
- (u) "Unauthorized insurer" means, with respect to a state, an insurer not authorized to transact the business of insurance in the state. The term includes an insurance exchange authorized under the laws of another state. The term does not include a risk retention group, as that term is defined in the Liability Risk Retention Act of 1986, 15 U.S.C. 3901(a)(4).

**33-2-302. Home state exclusive authority -- conditions precedent to sale of surplus lines insurance.** (1) Pursuant to the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, the transaction of surplus lines insurance is subject to the statutory and regulatory requirements of the home state of the insured, regardless of whether a multistate risk is covered. If, at the time of the surplus lines insurance transaction, the home state:

- (a) is Montana, the surplus lines insurance transaction is subject to the applicable statutory and regulatory requirements in Montana; or
- (b) is not Montana, the Montana statutory and regulatory requirements regarding the surplus lines insurance transaction are preempted by the statutory and regulatory requirements of the home state.
- (2) When Montana is the home state at the time of the surplus lines insurance transaction, the following apply:
- (a) A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with an unauthorized insurer if:
- (i) the insurer is an eligible surplus lines insurer;
- (ii) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers or, in the case of a renewal, the line of insurance has not become available from an authorized insurer, as evidenced by one of the following:
- (A) the producing insurance producer making a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.
- (B) the appearance on the current approved risk list of the kind of insurance being sought;
- (iii) the insurance is not procured for the purpose of securing:
- (A) a lower premium rate than would be accepted by an authorized insurer unless the premium rate quoted by the authorized insurer is at least 10% higher and at least \$1,500 greater than the premium rate quoted by the unauthorized insurer; or

(B) an advantage in terms of the insurance contract; and

(iv) all other requirements of this part are met.

(b) A contract of insurance may not be placed with an unauthorized insurer under subsection (2)(a)(iii)(A) unless the unauthorized insurer is eligible under [33-2-307](#) and the unauthorized insurer or the surplus lines insurance producer that placed the contract of insurance with the unauthorized insurer has provided the insured with disclosure information in a form and content approved by the commissioner.

(c) A surplus lines insurance producer placing coverage with an eligible surplus lines insurer for an exempt commercial purchaser is not required to satisfy the search requirements in subsection (2)(a) if:

(i) the surplus lines insurance producer placing the coverage has disclosed to the exempt commercial purchaser that the insurance may or may not be available from an authorized insurer that may provide greater protection with more regulatory oversight; and

(ii) the exempt commercial purchaser has subsequently requested in writing to the surplus lines insurance producer that the coverage be placed with the surplus lines insurer.

**33-2-303. Filing and endorsement of contract -- submission form.** (1) Each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance under this part, along with a submission form prescribed by the commissioner by rule, must be filed with:

(a) the commissioner if Montana is the home state of the insured and:

(i) the coverage is for a single-state risk; or

(ii) the commissioner has not entered an agreement pursuant to [33-2-323](#) for multistate risks;

(b) the clearinghouse, established pursuant to [33-2-323](#), if in operation and if the commissioner has entered an agreement pursuant to [33-2-323](#) for multistate risks.

(2) The commissioner shall establish by rule a submission form for reporting surplus lines transactions. The commissioner may establish different submission forms for insureds that independently procured insurance, surplus lines insurance producers, single-state risks, and multistate risks. The submission form for surplus lines insurance producers must include:

(a) information regarding the producing producer's diligent efforts to place the coverage with authorized insurers and the results of the efforts; and

(b) the producing insurance producer's affirmation that the producer has expressly advised the insured prior to placing the insurance that:

(i) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(ii) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.

(3) A submission form filed under this section is subject to public inspection.

(4) The commissioner may establish by rule an endorsement to be made on each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance by a surplus lines insurance producer under this part advising the insured that the coverage is issued by an unauthorized insurer that is not covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent. The surplus lines insurance producer shall properly fill in and sign the endorsement.

**33-2-304. Surplus lines insurance valid.** Insurance contracts procured as surplus lines insurance from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties and shall be given acceptance and recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

**33-2-305. Licensing of surplus lines insurance producer -- fee.** (1) If Montana is the home state of the insured, the person placing a contract of surplus lines insurance with an

unauthorized insurer must possess a current surplus lines insurance producer's license issued by the commissioner.

(2) The commissioner shall issue licenses to persons to act as surplus lines insurance producers on either a resident or nonresident basis. To be eligible for a resident surplus lines insurance producer license, the person must hold a current property and casualty insurance producer license.

(3) Persons applying for a resident surplus lines insurance producer license shall:

(a) remit to the commissioner the fee prescribed by [33-2-708](#); and

(b) submit to the commissioner a completed license application in a form and manner approved by the commissioner.

(4) Persons applying for a nonresident surplus lines insurance producer license shall comply with [33-17-401](#).

(5) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

(6) A business entity is eligible to be licensed as a surplus lines insurance producer if:

(a) the business entity license lists the individuals within the business entity who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the business entity license transact surplus lines insurance.

(7) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license.

(8) This section may not be construed to require a surplus lines insurance producer license for independently procured insurance.

(9) The commissioner may participate in the national association of insurance commissioners' producer licensing database regarding surplus lines insurance producer licensing.

**33-2-306. Surplus lines insurance producer's authority under license -- acceptance of business from other insurance producers.**

(1) Under a surplus lines insurance producer's license, the licensee may place surplus lines insurance, in compliance with this part, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual or business entity that has not been appointed as an insurance producer in this state and may provide compensation for the service, notwithstanding [33-17-1103](#).

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered.

**33-2-307. Requirements for eligible surplus lines insurers -- list of eligible surplus lines insurers.**

(1) If an unauthorized insurer is domiciled in any state, a surplus lines insurance producer may not place insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) is authorized to issue the same kind of property or casualty insurance in its domiciliary jurisdiction; and

(b) maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(i) the minimum capital and surplus requirements of [33-2-109](#) and [33-2-110](#); or

(ii) \$15 million. An insurer possessing less than \$15 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner.

The commissioner's finding must be based upon such factors as the quality of management,

capital, and surplus of a parent company; company underwriting profit and investment income trends; market availability; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4.5 million.

(2) If an unauthorized insurer is an alien insurer, a surplus lines insurance producer may not place insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer appears

on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(3) A list of eligible surplus lines insurers must be published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders.

**33-2-308. Evidence of insurance -- changes -- penalty.** (1) Upon placing surplus lines insurance, the surplus lines insurance producer shall promptly issue or deliver to the insured or the producing insurance producer evidence of the insurance, consisting either of the policy as issued by the insurer or, if the policy is not then available, a cover note or certificate of insurance signed or countersigned by the insurance producer. The cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If a direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) If after the issuance and delivery of any cover note or certificate there is a change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the surplus lines insurance producer shall promptly issue or deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible under the coverage.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines insurance producer has issued and delivered a cover note or certificate as provided in subsection (2), upon request by the insured, the surplus lines insurance producer shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the cover note or certificate previously issued.

(4) A surplus lines insurance producer who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of a material change with respect to the insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) is guilty of a violation of this code and upon conviction is subject to the penalties provided by [33-1-104](#) or to any greater applicable penalty otherwise provided by law.

(5) A surplus lines insurance producer may not issue or deliver an evidence of insurance or purport to insure or represent that insurance will be or has been written by an eligible surplus lines insurer unless the surplus lines insurance producer has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that the insurance has been granted.

**33-2-309. Liability of insurer as to losses and unearned premiums.** (1) As to a surplus lines risk that has been assumed by an unauthorized insurer pursuant to The Surplus Lines Insurance Law and if the premium on the surplus lines risk has been received by the surplus lines insurance producer who placed the insurance, in all questions arising under the coverage as between the insurer and the insured, the insurer is considered to have received the premium due to it for the coverage. The insurer is liable to the insured for losses covered by the insurance and for unearned premiums that may become payable to the insured upon cancellation of the insurance, whether or not in fact the surplus lines insurance producer is indebted to the insurer with respect to the insurance or for any other cause. This provision does not affect rights as between the insurer and the surplus lines insurance producer.

(2) A payment of premium to a surplus lines insurance producer acting for a person other than individually in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered to have subjected itself to the terms of this section.

**33-2-310. Records -- tax and fee statement.** (1) Each surplus lines insurance producer shall keep a separate record and account of all business transacted under the producer's license, including a copy of each daily report, if any, or of each policy, certificate of insurance, cover note, or other evidence of insurance issued or delivered by the producer. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

(2) By the reporting date established by the commissioner by rule, the surplus lines insurance producer shall file with the commissioner or with the clearinghouse if requested by the commissioner a tax and fee statement for the preceding reporting period. The commissioner shall establish by rule the content and form of the tax and fee statement that must include but is not limited to:

(a) name and principal residence of the insured or the address at which the insured maintains its principal place of business;

(b) a brief and general description of the risk or exposure insured and where located;

(c) name and home office address of each insurer providing the surplus lines insurance;

(d) amount of each surplus lines insurance policy, the premium rate, and the gross premium charged for the policy;

(e) date and term of the policy;

(f) amount of premium returned on each policy canceled or not taken;

(g) amount of tax and other sums to be collected from the insured;

(h) identity of the producing insurance producer; and

(i) additional information that the commissioner may reasonably require.

(3) If Montana is the home state of the insured, an insured that has independently procured insurance shall report the surplus lines insurance transaction to the commissioner or the clearinghouse if requested by the commissioner in a manner and format prescribed by the commissioner. The insured is responsible for payment of the taxes, stamping fees, and clearinghouse processing fees associated with the surplus lines insurance transaction and is subject to the penalties under this part for failure to timely pay the taxes and fees.

**33-2-311. Tax on surplus lines insurance.** (1) Except as provided in [33-2-323](#), when this state is the home state of the insured, the surplus lines insurance producer shall collect from the insured and pay to the commissioner a tax upon premiums collected for surplus lines insurance transacted in this state. The amount of premiums collected and the tax rate must be computed in the same manner as provided in [33-2-705](#) as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in



excess of the premium otherwise required, are not considered to be part of the premium for the purposes of the computation. Upon filing of the tax and fee statement referred to in [33-2-310](#), the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by the surplus lines insurance producer during the preceding reporting period as well as the stamping fee on the premium payable by the insured regardless of whether the coverage includes risks or exposures partially located or to be performed in another state.

(2) Except as provided in [33-2-323](#), if this state is not the home state of the insured, the commissioner may not collect any tax or stamping fee regardless of whether the coverage includes risks or exposures partially located or to be performed in this state.

(3) The commissioner by rule shall establish procedures that provide for the collection and payment of premium taxes, as well as the reporting of premium tax and surplus lines insurance transaction data, in accordance with the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, for payment of taxes on this state's portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state.

**33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee.** (1) A surplus lines insurance producer or an insured that independently procured insurance that fails to file the tax and fee statement as required under [33-2-310](#) or to pay the taxes as required under [33-2-311](#) is liable for a penalty of \$25 for each day of delinquency, commencing 30 calendar days after the due date established by the commissioner by rule. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction with the attorney general representing the commissioner. The penalty when collected, unless collected by a justice's court, must be paid to the commissioner, forwarded to the state treasurer, and placed to the credit of the general fund. The surplus lines insurance producer's license is also subject to revocation as provided in [33-2-313](#).

(2) If a surplus lines insurance producer or an insured that independently procured insurance does not pay the stamping fee provided for in [33-2-321](#), the commissioner may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid.

**33-2-313. Revocation or suspension of license.** (1) The commissioner shall revoke or suspend any surplus lines insurance producer's license, together with any license as an insurance producer:

- (a) if the insurance producer fails to file a tax and fee statement or to remit the tax and fee as required by law;
- (b) if the insurance producer fails to keep the records or to allow the commissioner to examine the records, as required by law;
- (c) if the insurance producer falsifies the submission form required by [33-2-310](#);
- (d) if the insurance producer closes the surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;
- (e) if the insurance producer violates any provision of this part; or
- (f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by [33-17-1001](#) for the suspension, revocation, or refusal to license or renew a license or for imposing a fine on an insurance producer or applicant apply to the suspension, revocation, or refusal to license or renew a license or to imposing a fine on a surplus lines insurance producer or applicant.

(3) An insurance producer whose license has been revoked or suspended may not again be licensed within 1 year after revocation or suspension or until the insurance producer pays all penalties and delinquent taxes that are owed.

**33-2-314. Actions against insurer -- venue.** Every unauthorized insurer issuing a surplus lines insurance policy under this part is considered to be doing business in this state as an unauthorized insurer and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit must be brought in the district court of the county wherein the plaintiff resides.

**33-2-315. Commissioner appointed process agent -- service of process.** (1) Every surplus lines insurer before transacting surplus lines insurance under this part shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer must be made upon the commissioner and in accordance with the procedures, requirements, and results as provided under [33-1-603](#).

**33-2-316. Rules.** The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

(1) effectuation of The Surplus Lines Insurance Law; and

(2) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers.

**33-2-317. Exemptions.** The Surplus Lines Insurance Law does not apply to reinsurance or to the following kinds of insurance when placed by a licensed insurance producer of this state:

(1) wet marine insurance;

(2) insurance on property or operations of railroads engaged in interstate commerce; and

(3) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft.

**33-2-318. Exempt commercial purchaser defined.** (1) An exempt commercial purchaser means an individual or business entity who at the time of placement:

(a) employs or retains a qualified risk manager to negotiate insurance coverage;

(b) has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and

(c) meets at least one of the following criteria:

(i) possesses a net worth in excess of \$20 million, as that amount may be adjusted pursuant to subsection (2);

(ii) generates annual revenue in excess of \$50 million, as that amount may be adjusted pursuant to subsection (2);

(iii) employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

(iv) is a not-for-profit organization or a public entity generating annual budgeted expenditures of at least \$30 million, as that amount may be adjusted pursuant to subsection (2); or

(v) is a municipality with a population in excess of 50,000 persons.

(2) Effective January 1, 2015, and on every 5th subsequent January 1, the amounts in subsections (1)(c)(i), (1)(c)(ii), and (1)(c)(iv) must be adjusted to reflect the percentage of

change for that 5-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

**33-2-319. Qualified risk manager defined.** (1) A qualified risk manager means a person who:

(a) is an employee of or a third-party consultant retained by the commercial policyholder;  
(b) provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis and purchases of insurance; and

(c) has the qualifications specified in subsection (2).

(2) To be a qualified risk manager, a person must have:

(a) (i) a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management; and

(ii) (A) 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(B) one of the following designations:

(I) a designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU/insurance institute of America;

(II) a designation as an associate in risk management issued by the American institute for CPCU/insurance institute of America;

(III) a designation as certified risk manager issued by the national alliance for insurance education and research;

(IV) a designation as a risk and insurance management society fellow issued by the global risk management institute;

(V) any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management;

(b) (i) at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(ii) any one of the designations specified in subsection (2)(a)(ii)(B);

(c) at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(d) a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

**33-2-321. Stamping fee and clearinghouse processing fee.** (1) The commissioner may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted in this state. The commissioner shall establish the stamping fee by rule commensurate with the expenses of regulating surplus lines. The stamping fee must be placed in a state special revenue account to the credit of the commissioner's office and used for the expenses of the commissioner's office in regulating surplus lines insurance.

(2) If the commissioner has entered an agreement with a clearinghouse as authorized pursuant to [33-2-323](#) to process multistate risks and allocate and distribute taxes and fees collected, the clearinghouse may collect a processing fee from the surplus lines insurance producer or the insured that independently procured insurance. The processing fee may be a flat fee per submission, a percentage of the premium payable for surplus lines insurance, or a combination of a flat fee and a percentage of premium payable. When a percentage of premium payable is used in calculating the processing fee, the charge may not exceed 1% of the premium payable for surplus lines insurance. The commissioner shall establish the processing fee by rule to be commensurate with the clearinghouse's charges to process multistate risks and allocate and distribute taxes and fees collected to the participating states.

(3) If applicable, the surplus lines insurance producer shall collect the stamping fee and



clearinghouse processing fee from the insured in addition to the premium payable for the insurance contract and any taxes and fees.

**33-2-322. Surplus lines advisory organization -- consultation with commissioner in developing approved risk list.**

(1) A surplus lines insurance advisory organization of surplus lines insurance producers may be formed to:

- (a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;
- (b) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market;
- (c) receive and disseminate to its members information relative to surplus lines insurance; and
- (d) communicate member and industry concerns to the commissioner.

(2) The surplus lines insurance advisory organization shall file with the commissioner:

- (a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;
- (b) a copy of its bylaws, rules, and regulations governing its activities;
- (c) a current list of its members.

(3) The commissioner may consult with the organization in regard to the development of the approved risk list and other matters concerning the regulation of surplus lines insurance transactions.

**33-2-323. Authorization for agreements with other state regarding multistate risks.**

(1) Following negotiated rulemaking under Title 2, chapter 5, the commissioner may enter into a cooperative or reciprocal agreement with other states, individually or collectively, for the purposes of collecting, allocating, and disbursing premium taxes and fees attributable to multistate risks. The allocation methodology of any agreement must be based upon readily available data, with simplicity and uniformity for the surplus lines insurance producer as a material consideration. Any agreement regarding multistate risks may require that a single, blended tax rate be used.

(2) An agreement entered into under this section must provide for:

- (a) uniform eligibility standards for unauthorized insurers;
- (b) uniform methods for reporting surplus lines insurance transactions and sharing information between the parties to the agreement based upon readily available data;
- (c) uniform methods for allocating and reporting surplus lines insurance risk classifications based upon readily available data;
- (d) uniform procedures for the collection, allocation, and distribution of taxes and fees attributable to the multistate risks;
- (e) uniform disclosures to policyholders regarding the reporting and collection of premium taxes on multistate risks;
- (f) an allocation methodology and resulting collection of premium tax revenue, less costs of administration and collection, that generate premium tax revenue not less than the premium tax revenue collected under [33-2-311](#);
- (g) minimizing the data collection and reporting burden on insureds and surplus lines insurance producers;
- (h) a withdrawal process that minimizes instability among the participating states and the surplus lines and insurance industries;
- (i) regulatory provisions that provide certainty regarding compliance to all persons having an interest in surplus lines insurance transactions, including but not limited to insureds, regulators, surplus lines insurance producers, other insurance producers, and surplus lines insurers; and
- (j) continued collection of premium taxes under [33-2-311](#) until the collection infrastructure under the agreement is fully operational and the provisions of the agreement are fully implemented.

(3) If the commissioner has entered into an agreement under subsection (1) for multistate risks and the agreement provides that each participating state develop a single, blended tax rate for multistate risks:

(a) the provisions of [50-3-109](#) are not applicable to the collection of premium taxes;

(b) the single, blended tax rate must be 3.3% on premiums and must be computed in the manner provided in [33-2-705](#)(1) as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes and in excess of the premium otherwise required are not considered to be part of the premium for the purposes of the computation; and

(c) the 3.3% tax collected must be distributed as follows:

(i) 2.75% must be considered premium taxes as provided in [33-2-705](#) and paid to the state general fund; and

(ii) 0.55% must be considered fire premium taxes as provided in [50-3-109](#) and paid to the state general fund.

(4) If a single-state risk is involved and Montana is the home state of the insured, the surplus lines transaction must be submitted to the commissioner and the commissioner shall collect the tax at the same rate and in the same manner as provided in [33-2-705](#).

(5) If the commissioner has entered into a cooperative or reciprocal agreement under subsection (1), the commissioner may contract with the designated clearinghouse to process multistate risks and allocate and distribute taxes and fees collected.

(6) As used in this section, "readily available data" means Montana-specific data, if any, used to rate a surplus lines insurance policy.

**33-2-326. Penalties.** A surplus lines insurance producer who in this state represents or aids an unauthorized insurer in violation of this part is subject to the penalties and procedures in [33-1-317](#) and [33-1-318](#).